IDAHO CONSERVATION LEAGUE

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9/12/16

John Drabek
US EPA Region 10
1200 Sixth Ave, OWW-130
Seattle, WA 98101

Submitted via email: Drabek.John@epamail.epa.gov

RE: Idaho Conservation League comments on the proposed reissuance of NPDES for Sorrento Lactalis, Permit No.: ID 28037

Dear Mr. Drabek

Thank you for the opportunity to comment on the draft NPDES permit for the Sorrento Lactalis facility located in Nampa, ID. Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 25,000 supporters, many of whom have a deep personal interest in protecting and restoring water quality throughout the Boise River watershed.

We are concerned that the beneficial uses for the receiving water body, Purdam Gulch Drain (PGD), have not been definitively identified. PGD is a Water of the U.S. and as such must be regulated accordingly. If information pertaining to a water body is lacking, as is the case here, then the most protective measures must be implemented until such time that adequate information is obtained. This issue is discussed in greater detail below in our comments.

Please do not hesitate to contact me at 208-345-6933 ext. 23 or ahopkins@idahoconservation.org if you have any questions regarding our comments or if we can provide you with any additional information on this matter.

Sincerely,

Austin Hopkins
Conservation Assistant

Level of Protection for Purdam Gulch Drain

The EPA acknowledges that PGD is a water of the U.S., yet they fail to afford it the protection it deserves. The IDEQ asserts that PGD is a manmade water designed to convey water for agricultural purposes, and as such seeks to only protect this beneficial use. Protecting only for agricultural water conveyance is erroneous though as all of the beneficial uses for PGD has yet to be defined. The EPA conducted an observational survey[1] seeking to identify the beneficial uses of PGD yet the results were inconclusive, thus there is potential that PGD supports aquatic life.

The PGD needs to be protected to the maximum extent possible until all of the beneficial uses for PGD are identified and supported by thorough and complete surveys. Failure to do this creates a scenario where Sorrento's discharge could be creating an inhospitable environment for aquatic life, thus negatively influencing aquatic life surveys and not accurately portraying the actual beneficial uses for PGD. In order to utilize the most stringent protection levels available the EPA must assume that PGD supports cold-water aquatic life and primary contact recreation and implement effluent limits reflecting the corresponding state WQS accompanying these beneficial uses.

Low Flow Conditions for Receiving Water Calculations

Appendices D and E of the EPA's Fact Sheet discuss the calculations used define effluent limits necessary to protect the receiving water body. After reviewing these calculations, it is unclear if the appropriate low flow data was utilized.

First, it appears that calculations for ammonia and pH do not use the low flow data collected from PGD in their respective reasonable potential estimates. Ammonia criteria were calculated for Mason Creek downstream of the confluence with PGD due to Mason Creek having aquatic life listed as a beneficial use. The reasonable potential analysis for pH uses data collected from PGD but at a downstream monitoring point 4.5 miles downstream of Sorrento's discharge point. The PGD is a water of the U.S. that potentially supports aquatic life; therefore reasonable potential analyses for both ammonia and pH must be performed for PGD at the point of discharge utilizing low flow data representative of actual conditions in PGD.

Second, it is unclear which low flow data were utilized for the WQBEL calculations performed for total phosphorus, TSS, and E. Coli in appendix E. The included derivations appear to only discuss the relationship between AML and MDL, with no discussion on how WQBEL were determined. Again, because the PGD is a water of the

[1] *Purdam Gulch Drain, WQS Existing Use, Screening Assessment, EPA 2015*

U.S. that potentially supports aquatic life, low flow data representative of the PGD at the point of discharge must be utilized for all effluent calculations.

pH Limits

EPA has chosen to utilize effluent limitations guidelines (ELG) for defining permissible pH limits of between 6.1-9.0. However, this range is not as stringent as Idaho's aquatic life thresholds of 6.5-9.0. As discussed previously, until all of the beneficial uses for the PGD are determined the EPA must implement the most stringent levels of protection. Therefore the pH effluent limits must be updated in order to comply with the Idaho WQS of 6.5-9.0.

Total Phosphorus

The draft permit proposes an average monthly effluent limit for total phosphorus of 1.3 lbs/day. EPA states this is consistent with IDEQ's 2015 Total Phosphorus TMDL. However, if Sorrento generates 1.52 mgd of wastewater – as stated in their application and utilized for calculations for TMDLs and this proposed permit – the discharged effluent would have a total phosphorus concentration of 0.1 mg/L. This concentration is an order of magnitude greater than the WLA of 0.03 mg/L presented in IDEQ's TMDL. The EPA must issue permit thresholds that are consistent with both mass- and concentration-based WLA. The EPA should handle total phosphorus in the same manner as BOD_5 and TSS and include both mass- and concentration-based thresholds in order to be consistent with current and approved TMDLs. Alternatively, EPA could lower the mass-based monthly average effluent limit to 0.38 lbs/day, which would also be consistent with the mass- and concentration-based TMDL.

Antidegradation Review

Neither IDEQ's CWA Section 401 Certification or the EPA's Existing Use Screening Assessment (EPA, 2015) have definitively characterized the beneficial uses of the Purdam Drain. In light of this, the draft permit includes a provision requiring data collection to determine the existing beneficial uses for this water body, most notably whether or not aquatic life is supported. We are concerned that the antidegradation review performed by IDEQ and relied upon by EPA does not sufficiently ensure that existing beneficial uses will not be impacted. In the absence of information the EPA must utilize the most stringent levels of protection until required beneficial uses surveys are completed and reviewed. At present, the antidegradation review does not provide sufficient assurance that all existing beneficial uses will not be impacted and should therefore not be relied upon by the EPA.

Typo in Table 7 of Fact Sheet

Draft permit limits for BOD_5 tier 3 thresholds for AML reads 62 lbs/day whereas it should state 49 lbs/day and tier 3 for MDL reads 122 lbs/day whereas it should state 98 lbs/day. This error is not present in the draft permit, but we wanted to bring it to your attention in case Table 7 from the Fact Sheet was utilized in any future documents.